



STATE OF UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY

EXPEDITED SETTLEMENT OFFER

This Expedited Settlement Offer (ESO), is entered into by and between the Division of Water Quality (DWQ) and **D.R. Horton Inc.** (Owner/Operator) pursuant to the DWQ Director's authority under the Utah Water Quality Act, Utah Code Sections 19-5-111, 19-5-115, Utah Administrative Code (UAC) R317-1-8 and R317-8-3.9. The DWQ and Operator are sometimes jointly referred to hereinafter as "the Parties." "Director" refers to the Director of DWQ.

1. Operator is a "person" as that term is defined in Utah Code Section 19-1-103(4).
2. Operator is conducting "construction activity" at **Lake Point Heights** (the Project).
3. The Director issued the General Permit for Storm Water Discharges from Construction Activities UTRC00000 authorizing owners/operators of construction activities to discharge in accordance with specific terms, conditions and best management practices as provided for in the Permit and UAC R317-8-11. Operator submitted a Notice of Intent and obtained coverage for the Project under UTRC00000 and was assigned UPDES permit No. UTRC01489 (Permit), making the Operator responsible for compliance with UTRC00000. (UTRC00000 and the Operator's specific coverage are referred to collectively herein after as "the Permit").
4. An ESO may be used in enforcement cases in lieu of the penalty process in UAC R317-1-8.3 when violations are readily identifiable, readily correctable, and do not cause significant harm to human health or the environment. UAC R317-1-8.6.
5. The attached "Expedited Settlement Offer Deficiencies Form" (ESODF), incorporated herein by reference, includes Findings which specify the conditions in violation of the Permit observed at the Project during an on-site inspection conducted on February 25, 2021. The ESODF is in lieu of an initial order, notice of violation or notice of agency action to facilitate the purposes described hereinafter.
6. The Parties voluntarily enter into this ESO in order to: identify the actions necessary to correct the deficiencies observed at the Project; determine the amount of the civil penalty appropriate for the violation(s) based on the deficiencies alleged; and to conclude this matter without the necessity of further administrative or judicial proceedings.
7. Operator understands and agrees that a penalty in the amount of \$1,590.00 is appropriate based on the circumstances specified herein. This proposed settlement and penalty are subject to a thirty (30) day notice and comment period as provided for in UAC R317-8-1.9. The Parties each reserve the right to withdraw from this ESO if comments received during the notice period result in a modification to the terms and conditions.
8. By accepting this ESO, Operator neither admits nor denies the findings, violations or deficiencies specified herein.



EXPEDITED SETTLEMENT OFFER

9. Operator agrees to the terms, conditions and requirements of this ESO. By signing this ESO, Operator understands, acknowledges and agrees that it waives: (1) the opportunity for an administrative hearing pursuant to Utah Code Section 19-1-301; (2) the right to contest the finding(s) in the ESDOF and the penalty amount specified herein; and (3) the opportunity for judicial review.
10. Operator certifies that all deficiencies identified herein have been corrected and that the Project is currently in full compliance with the terms and provisions of the Permit. Additionally, Operator has attached to this ESO: (1) a written description detailing how the deficiencies were corrected; and (2) representative photographs documenting the current conditions and the associated Best Management Practices implemented at the Project.
11. The Parties mutually agree that this ESO is entered in good faith and is an appropriate means to resolve the matters specified herein.
12. This ESO will be final after the thirty (30) day notice and comment period on the date the Director signs the ESO, at which time the civil penalty takes effect.
13. Operator agrees that within fifteen (15) calendar days of receiving the signed and final ESO and invoice information from the Division, Operator shall submit payment in accordance with the (attached instructions) and Divisions invoice to the Division of Water Quality in the amount specified in paragraph 7 above.
14. The violations described herein will constitute part of Operator's compliance history where such history is relevant, including any subsequent violations. Operator understands and agrees that this ESO is not and cannot be raised as a defense to any other action to enforce any federal, state or local law.
15. This ESO, when final, is binding upon Operator and any corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrants that it is authorized to legally bind their respective principals to this ESO.

ACCEPTED BY OPERATOR:

Name (print) DAVID ANDRUS

Title (print) V.P. OF OPERATIONS

Signature [Signature] Date 12-13-21

DIVISION OF WATER QUALITY

Date _____

Erica Brown Gaddis, PhD, Director



EXPEDITED SETTLEMENT OFFER INSTRUCTION SHEET

The Expedited Settlement Offer ("Offer") is the preferred option to resolve non-compliance. If you choose to sign and return the Offer, you waive your opportunity for a hearing and to appeal pursuant to the Utah Water Quality Act, Title 9, Chapter 5, Section 112. If you choose not to sign and return the Offer within THIRTY (30) DAYS, the Offer will be automatically withdrawn, without prejudice to DWQ's ability to file an enforcement action for the violations alleged herein or any other violations. DWQ may choose to pursue more formal enforcement measures to correct the violation(s) and seek penalties of up to a maximum penalty of \$10,000 per day per violation.

To accept and proceed you must:

- (1) **Correct all deficiencies** identified by DWQ in the Deficiencies Form (enclosed). **Email or mail photographic proof** and a description of the remedy to demonstrate correction of the deficiencies;
- (2) Sign two copies of the Offer within **thirty (30) days** of receipt and mail both original signed Offers back to DWQ via certified mail;
- (3) **Wait for the 30-day public notice** to be completed and for the Director of DWQ to sign the Offer; and
- (4) **After** DWQ has sent you a copy of the Offer signed by the Director and an invoice you will have **fifteen (15) days to submit payment for the penalty** to the Division of Water Quality. Payment cannot be accepted before this time and will be returned if sent prior to the invoice being generated.

Please retain copies of the signed Offer, the report detailing your corrective actions and the penalty checks for your own records.

You may contact the person listed on your inspection letter to request an extension. DWQ will consider whether to grant an extension on a case-by-case basis. If you believe that the alleged violations are without merit (and you can provide evidence contesting the allegations) you must provide such information to DWQ as soon as possible but no later than THIRTY (30) DAYS from your receipt of the Offer.

- (5) Mail any correspondence, signed offers, and payments to:



**Division of Water Quality
PO Box 144870
Salt Lake City, Utah 84114-4870**

Payments can also be made through the DEQ online payment portal.

1. Visit https://secure.utah.gov/cart/dwq_cart/products.html
2. Select the INVOICE PAYMENT option at the top.
3. Complete the ADDITIONAL INFORMATION fields (description/invoice #/amount). The invoice# is essential for us to credit the customer correctly. Then click ADD TO CART.
4. The customer can then review their cart, edit their cart, or CHECKOUT.
5. Add method of payment.

DWQ-2021-028788

Expedited Settlement Offer Worksheet Deficiencies Form

Consult instructions regarding eligibility criteria
and procedures prior to use

Version 2.0 (Rev. 07/2021)



| | |
|---|---|
| LEGAL NAME AND MAILING ADDRESS OF OPERATOR | Inspector Name: Ryan Curtin |
| Dave Andrus | Inspector Name: Eric Castrejon |
| D.R. Horton Inc. | Inspection Date: 2/25/2021 |
| 12351 South Gateway Park Place Suite D100 | UPDES Program: Construction Storm Water |
| Draper, UT 84020 | UPDES Permit Number: UTRC01489 |
| | Inspection Report Issue Date: 3/11/2021 |
| LOCATION AND ADDRESS OF SITE | Compliance Date: 3/18/2021 |
| Lake Point Heights | |
| 1200 East Blue Moon Drive | |
| Tooele, UT 84074 | |

| | |
|--|-----------------------------|
| FACILITY DESCRIPTION / CONTACT NAMES | |
| Name & Telephone Number of Site Contact (ESO Worksheet recipient): | Dave Andrus: (801) 571-7101 |
| Name of Authorized Official (UT CGP Appendix G.16): | Dave Andrus |
| Start Construction Date: | 10/23/2020 |
| Estimated Completion Construction Date: | 10/23/2021 |
| If Unpermitted, Number of Months Unpermitted: | N/A |
| Name of Receiving Water Body (Indicate whether 303(d) listed or high quality): | Irrigation canal - Known |
| Acres Currently Disturbed Acres to be Disturbed in Whole Common Plan: | 18.01 18.01 |
| Has Operator Requested Rainfall Erosivity? | No |

| PERMIT COVERAGE | FINDINGS | Citation Reference | DEFICIENT | AMOUNT | TOTAL |
|--|----------|----------------------|-----------|------------|-------|
| 1 Project Unpermitted | | UAC R317-8-3.1(1)(a) | | \$750.00 = | \$0 |
| 2 Lapse in coverage (was permitted, failed to renew) | | UT CGP 1.4.2. | | \$180.00 = | \$0 |

| SWPPP REVIEW | | | | | |
|--|--|-------------------------------------|--|--------------|-----|
| 3 No SWPPP If No SWPPP, do not also count missing SWPPP contents. | | UT CGP 7.1. | | \$1,200.00 = | \$0 |
| 4 Erosion & Sediment Control Plan but no SWPPP. | | UT CGP 7.3.3. | | \$300.00 = | \$0 |
| 5 SWPPP prepared after construction start. | | UT CGP 7.1., 1.4. | | \$180.00 = | \$0 |
| 6 SWPPP missing identification of all potential sources of pollution to include: portable toilet, fuel tanks, egress points, staging areas, waste containers, chemical storage areas, concrete washout, paints, solvents, etc. | | UT CGP 7.3.2. | | \$60.00 = | \$0 |
| 7 SWPPP missing identification of project owner and operator for the project site | | UT CGP 7.3.1 | | \$60.00 = | \$0 |
| 8 SWPPP missing site description - nature of activity in description (including disturbed & total acres). | | UT CGP 7.3.2.a., 7.3.2.b., 7.3.2.c. | | \$60.00 = | \$0 |
| 9 SWPPP missing site description - intended sequence of major activities. | | UT CGP 7.3.2.e. | | \$60.00 = | \$0 |
| 10 No Site Map If No Site Map, do not also count missing site map contents. | | UT CGP 7.3.3. | | \$240.00 = | \$0 |
| 11 Site map missing - boundaries of project, disturbances, drainage patterns, slopes, stockpiles, egress points, structures to be constructed, offsite staging, waste bins, equipment and supply storage areas, borrow areas (including off-site locations). | | UT CGP 7.3.3. | | \$60.00 = | \$0 |
| 12 Site map missing - surface waters, inlets, storm water control measures, stabilization practices, discharge points, areas of final stabilization. | | UT CGP 7.3.3. | | \$60.00 = | \$0 |
| 13 SWPPP missing natural buffers description and locations of natural buffer or compliance alternative by water body(ies). | | UT CGP 7.3.5.b.(1) | | \$120.00 = | \$0 |
| 14 SWPPP missing location/description of industrial activities including concrete, asphalt batch plants, staging areas, equipment or supply storage, borrow areas (including those that are off-site). | | UT CGP 7.3.2.d. | | \$60.00 = | \$0 |
| 15 SWPPP missing description of all pollution control measures (e.g. BMPs), and show details and specifications for proper installation. | | UT CGP 7.3.5.a. | | \$180.00 = | \$0 |
| 16 SWPPP missing description of permanent and interim stabilization practices. | | UT CGP 7.3.5.b.(6) | | \$120.00 = | \$0 |
| 17 SWPPP missing identification of non-storm water discharge sources and locations. | | UT CGP 7.3.4. | | \$60.00 = | \$0 |

| | | | | | | | |
|--|---|--|----------------------|--|----------|---|-----|
| 18 | SWPPP missing spill prevention and response procedures. | | UT CGP 7.3.5.b.(7) | | \$60.00 | = | \$0 |
| 19 | SWPPP missing description of measures that will be used to control <u>waste</u> on the site including: demolition debris, spoils (unwanted dirt), construction waste, hazardous or toxic waste, and sanitary waste. | | UT CGP 7.3.5.b.(8) | | \$60.00 | = | \$0 |
| 20 | SWPPP missing inspection procedures, inspectors (and certs), inspection schedules, inspection forms/checklists and procedures for corrective action. | | UT CGP 7.3.6. | | \$60.00 | = | \$0 |
| 21 | SWPPP missing description training of personnel responsible for conducting inspections, taking corrective action, applying or storing treatment chemicals, and those involved with design; installation; maintenance; and repair of storm water control measures. | | UT CGP 7.3.7 | | \$60.00 | = | \$0 |
| 22 | SWPPP missing copy of permit, authorization to discharge form, and/or NOI. | | UT CGP 7.3.10. | | \$60.00 | = | \$0 |
| 23 | SWPPP missing revisions to match corrective actions and modifications made on the site. | | UT CGP 7.5. | | \$120.00 | = | \$0 |
| 24 | SWPPP copy not retained on site. | | UT CGP 7.4.1. | | \$60.00 | = | \$0 |
| 25 | SWPPP not made available per DWQ request. | | UT CGP 4.8.2. | | \$60.00 | = | \$0 |
| 26 | SWPPP Missing signature/certification by authorized representative. | | UT CGP 7.3.9., 9.16. | | \$60.00 | = | \$0 |
| Subtotal Permit Coverage & SWPPP Deficiencies | | | | | | = | \$0 |

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|---|--|--|------------------------|-----|----------|---|-------|
| INSPECTIONS | | | | | | | |
| 27 | Inspections: 10% or less not conducted (or not documented). | | UT CGP 4.2. | | \$300.00 | = | \$0 |
| 28 | Inspections: Greater than 10% Not conducted (or not documented). | | UT CGP 4.2. | | \$525.00 | = | \$0 |
| 29 | Inspections: No inspections conducted. | The site operator did not perform self-inspection reports during the course of the project, since permit coverage began on October 23, 2020. | UT CGP 4.2. | Yes | \$750.00 | = | \$750 |
| 30 | Inspections: Not conducted by qualified personnel. | | UT CGP 4.1.a. | | \$60.00 | = | \$0 |
| 31 | Inspections: Missing disturbance areas, areas with sw control measures, construction support areas, areas exposed to precipitation with storm water flows, temporarily stabilized areas, and storm water discharge points. | | UT CGP 4.5 | | \$60.00 | = | \$0 |
| 32 | Inspections: Incomplete site inspection reports including associated corrective actions (date, name and qualifications of inspector, weather information, location of sediment/pollutant discharge, BMP(s) requiring maintenance, BMP(s) that have failed, BMP(s) that are needed, corrective action required including changes/updates to SWPPP and schedule/dates, and not properly signed). | | UT CGP 4.5., 4.6., 5.1 | | \$120.00 | = | \$0 |
| 33 | Inspections: Inspection report incomplete (1-5 inspections). Inspections: Site Inspection Reports incomplete (more than 5 inspections). | | UT CGP 4.5., 4.6 | | \$240.00 | = | \$0 |
| Subtotal Inspection Deficiencies | | | | | | = | \$750 |

| | | | | | | | |
|--------------------------------------|---|---|---------------|-----|----------|---|-------|
| AVAILABILITY OF RECORDS | | | | | | | |
| 34 | Sign/Notice not posted. If no sign/notice, do not also count missing contents. | The Notice of Intent (NOI) was removed from the project signage | UT CGP 1.5. | Yes | \$120.00 | = | \$120 |
| 35 | Sign/Notice missing copy of complete NOI. | | UT CGP 7.3.10 | | \$60.00 | = | \$0 |
| 36 | Sign/Notice missing contact information. | | UT CGP 1.5.2. | | \$60.00 | = | \$0 |
| Subtotal Records Deficiencies | | | | | | = | \$120 |

| | | | | | | | |
|----------------------------------|---|--|---------------|-----|----------|---|-------|
| BEST MANAGEMENT PRACTICES | | | | | | | |
| 37 | Control measures not installed (1) | The operator did not install tracking controls on the lots under construction as per the SWPPP | UT CGP 2.1.3. | Yes | \$180.00 | = | \$180 |
| 38 | Control measures not installed (2-3) | | UT CGP 2.1.3. | | \$240.00 | = | \$0 |
| 39 | Control measures not installed (4+) | | UT CGP 2.1.3. | | \$300.00 | = | \$0 |
| 40 | Control measures not properly installed/designed/selected (1) | | UT CGP 2.1.2. | | \$120.00 | = | \$0 |
| 41 | Control measures not properly installed/designed/selected (2-3) | | UT CGP 2.1.2. | | \$180.00 | = | \$0 |
| 42 | Control measures not properly installed/designed/selected (4+) | | UT CGP 2.1.2. | | \$240.00 | = | \$0 |

| | | | | | | | |
|------------------------|---|--|--------------------------------|-----|----------------------------|---|-----------|
| 43 | Maintenance not performed to maintain effectiveness of BMPs (1-3) | The concrete washout pit onsite was over-filled, the liner had pulled away into the washout | UT CGP 2.1.4. | Yes | \$60.00 | = | \$60 |
| 44 | Maintenance not performed to maintain effectiveness of BMPs (4-5) | | UT CGP 2.1.4. | | \$120.00 | = | \$0 |
| 45 | Maintenance not performed to maintain effectiveness of BMPs (6+) | | UT CGP 2.1.4. | | \$180.00 | = | \$0 |
| 46 | Prohibited Discharges <u>Not</u> Impacting waters of the State. (1-3) Examples: Concrete washout, vehicle leaks, etc. | | UT CGP 1.2; 1.3; 2.3 | | \$180.00 | = | \$0 |
| 47 | Prohibited Discharges <u>Not</u> Impacting waters of the State. (4-6) | | UT CGP 1.2; 1.3; 2.3 | | \$240.00 | = | \$0 |
| 48 | Prohibited Discharges <u>Not</u> Impacting waters of the State. (7-10) | | UT CGP 1.2; 1.3; 2.3 | | \$300.00 | = | \$0 |
| 49 | Sediment Trackout. (1) | | UT CGP 2.2.4.d. | | \$120.00 | = | \$0 |
| 50 | Sediment Trackout. (2-3) | | UT CGP 2.2.4.d. | | \$180.00 | = | \$0 |
| 51 | Sediment Trackout. (4+) | Sediment was tracked from the disturbed, undeveloped portion of the site to the road at multiple (4+) locations | UT CGP 2.2.4.d. | Yes | \$300.00 | = | \$300 |
| 52 | Natural vegetated buffer or alternative is not present adjacent to bordering water bodies (or substituted equivalent BMPs). | | UT CGP 2.2.1. | | \$180.00 | = | \$0 |
| 53 | Discharge not treated prior to entering buffer. | | UT CGP A.2.3. | | \$120.00 | = | \$0 |
| 54 | Pollutant sources such as litter, construction debris, chemicals, spilled washout material are exposed to storm water. Pollutant Source exposed to storm water (1-3) | | UT CGP 2.3. | | \$120.00 | = | \$0 |
| 55 | Pollutant Source exposed to storm water (4-5) | •Washout debris was dumped outside of the washout pit on the tracked approach. •A vehicle located in the cul-de-sac had either washed or leaked hydrocarbons from the bed onto the road and sediment. •Liquid from dumpster being removed offsite spilled on the roadway | UT CGP 2.3. | Yes | \$180.00 | = | \$180 |
| 56 | Pollutant Source exposed to storm water (6+) | | UT CGP 2.3. | | \$240.00 | = | \$0 |
| 57 | Stabilization measures not met. | | UT CGP 2.2.14. | | \$300.00 | = | \$0 |
| 58 | Sediment basin has inadequate capacity or is greater than 50% full. | | UT CGP 2.2.12. | | \$180.00 | = | \$0 |
| | | | | | Subtotal BMP Deficiencies | | = \$720 |
| NOT conditions not met | | | | | | | |
| 59 | Failure to submit NOT | | UT CGP 8.2 | | \$60.00 | = | \$0 |
| 60 | Final Stabilization Requirements Not Met | | UT CGP 8.2.1.a | | \$300.00 | = | \$0 |
| 61 | All waste, including potential pollutants, not properly removed and/or disposed of | | UT CGP 8.2.1.b; UT CGP 8.2.1.d | | \$120.00 | = | \$0 |
| 62 | All temporary stormwater controls (not associated with stabilization) not removed. | | UT CGP 8.2.1.c | | \$120.00 | = | \$0 |
| | | | | | Subtotal NOT Deficiencies | | = \$0 |
| ADDITIONAL FACTORS | | | | | | | |
| 63 | Is the project over 30 acres? (True or False) | Add 15% to penalty | | | | = | \$0 |
| 64 | Is the project over 100 acres? (True or False). If over 100 acres, do not include fine for project being over 30 acres. | Add 30% more to penalty | | | | = | \$0 |
| 65 | Does the project border on a water body? (True or False) | Add 20% to penalty | | | | = | \$0 |
| DWQ-2021-028782 | | | | | TOTAL EXPEDITED SETTLEMENT | | = \$1,590 |



State of Utah

SPENCER J. COX
Governor

DEIDRE HENDERSON
Lieutenant Governor

Department of
Environmental Quality

Kimberly D. Shelley
Executive Director

DIVISION OF WATER QUALITY
Erica Brown Gaddis, PhD
Director

December 1, 2021

CERTIFIED MAIL
(Return Receipt Requested)

VIA EMAIL
READ RECEIPT REQUESTED

D.R. Horton Inc.
Attn: Dave Andrus
12351 South Gateway Park Place Suite D100
Draper, UT 84020

CT Corporation System
Registered agent for D.R. Horton, Inc.
1108 E South Union Ave
Midvale, UT 84047

Subject: **Expedited Settlement Offer (ESO) for Lake Point Heights UPDES Permit No. UTRC01489, located in Lake Point, UT**

Dear Mr. Andrus:

On February 25, 2021 Ryan Curtin and Eric Castrejon from the Utah Division of Water Quality (DWQ) performed a storm water compliance evaluation inspection at the above named site and identified violations of the Utah Construction General Permit (CGP). Given that the violations were readily identifiable, readily correctable, and did not cause significant harm to human health or the environment, the enforcement case qualifies for an Expedited Settlement Offer (ESO) in lieu of the formal enforcement and penalty process.

The DWQ is offering you the opportunity to enter into the attached ESO agreeing to pay the administrative penalty amount calculated by the attached ESO Deficiencies Calculation Sheet, and avoiding the need for future enforcement or administrative proceedings. In order to accept the ESO, please sign and return two copies of the agreement to DWQ within 30 days of the received date. You are not compelled to sign the ESO; if you do not wish to accept the ESO, the DWQ will

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Expedited Settlement Offer (ESO) for Lake Point Heights

UPDES Permit No. UTRC01489

Lake Point, UT

pursue formal enforcement. If you have any questions regarding this Order or other information contained therein, please contact Eric Castrejon at 385-341-3503 or ecastrejon@utah.gov.

Sincerely,



Samantha K. Heusser

Manager, Compliance & Enforcement Section

Utah Division of Water Quality

SKH/EC/blj

Enclosures: 1. ESO (DWQ-2021-028790)
2. ESO Deficiencies Calculation Sheet (DWQ-2021-028782)
3. ESO Instruction Sheet (DWQ-2021-028788)

Cc: Via Email

Brian Slade, Environmental Director Tooele County Public Health Department

Jeanne Riley, Division of Water Quality

Meg Osswald, Utah Attorney General's Office

DWQ-2021-028784